

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

**Caption in Compliance with D.N.J. LBR 9004-1(b)**

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In re:

BED BATH & BEYOND INC., *et al.*,

Debtors.<sup>1</sup>



**Order Filed on August 30, 2023**

**by Clerk**

**U.S. Bankruptcy Court**

**District of New Jersey**

Chapter 11

Case No. 23-13359 (VFP)

(Jointly Administered)

**STIPULATION AND AGREED ORDER REGARDING THE PLAINTIFF'S MOTION FOR RELIEF FROM THE STAY PURSUANT TO 11 U.S.C. § 362(D) TO CONTINUE PENDING LITIGATION**

The relief set forth on the following pages, numbered two (2) through nine (9), is **ORDERED.**

**DATED: August 30, 2023**

A handwritten signature in black ink, appearing to read "Vincent F. Papalia".

**Honorable Vincent F. Papalia**  
**United States Bankruptcy Judge**

<sup>1</sup> The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

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This Stipulation and Agreed Order (the “Stipulation”) is entered into between the above-captioned debtors and debtors in possession (collectively, the “Debtors”), Kelly Burt-Deasy (the “Plaintiff”), and Jonathan Schwefel, a.k.a. Jack Schwefel (“Schwefel,” and, together with the Debtors and the Plaintiff, the “Parties”) who stipulate and agree as follows.

**WHEREAS**, on May 25, 2022, the Plaintiff filed her *First Amended Complaint for Damages* (the “State Court Action”) against Cost Plus, Inc., Cost Plus Management Services, Inc., Cost Plus World Market, LLC, World Market, LLC, World Market Management Services, LLC, and Does 5–50 (collectively, the “Non-Debtor Defendants”), Bed Bath & Beyond Inc. (“BBB”), and Schwefel in the Superior Court of the State of California, in and for the County of Alameda (the “State Court”) to recover, among other things, damages arising from various employment-related causes of action (the “Claims”). *See Kelly Burt-Deasy v. Cost Plus, Inc. a.k.a. Cost Plus, a California corporation, et al.*, Case No. RG20078793.

**WHEREAS**, prior to the Petition Date (as defined below), Schwefel, BBB, and the Non-Debtor Defendants were being jointly represented in the State Court Action, as the Plaintiff was alleged to be a joint employee of BBB at the time of the alleged events giving rise to the State Court Action.

**WHEREAS**, on April 23, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of New Jersey (the “Court”), which triggered these bankruptcy proceedings (the “Bankruptcy Proceedings”). The Debtors continue to operate their

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businesses and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

**WHEREAS**, upon the Debtors' filing of their chapter 11 petitions, the State Court Action was stayed automatically pursuant to section 362 of the Bankruptcy Code (the "Stay") as to BBB. On July 25, 2023, the Plaintiff filed a *Motion for Relief from the Automatic Stay and Memorandum of Law in Support* (the "Motion") [Docket No. 1511] seeking to adjudicate, liquidate, and obtain a judgment as to BBB in the State Court Action and recover from applicable insurance carriers, if any.

**WHEREAS**, the Parties have agreed to allow (1) the Plaintiff to (a) adjudicate, liquidate, and obtain a judgment as to BBB, Schwefel, and the Non-Debtor Defendants in the State Court Action and (b) execute, levy, and collect upon any judgment rendered in the State Court Action from Schwefel, the Non-Debtor Defendants, non-debtor sources, or applicable insurance carriers other than the D&O Policy (as defined below), if any, only, and not from the Debtors, their estates, their successors, or their property, and (2) proceeds of the D&O Policy (as defined below) to be disbursed to Schwefel, or for Schwefel's benefit. The Plaintiff acknowledges that the Debtors have not made any representations or warranties as to the likelihood or possibility of recovery against Schwefel, any Non-Debtor Defendants, non-debtor sources, or insurance coverage, if any, and that by entering into this Stipulation, neither Schwefel nor any of the Non-Debtor Defendants make any type of admission of wrongdoing or liability.

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**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, AND UPON APPROVAL BY THE BANKRUPTCY COURT OF THIS STIPULATION, IT IS SO ORDERED** as follows:

1. The foregoing recitals are hereby incorporated by reference into this Stipulation with the same force and effect as if set forth fully hereinafter.

2. This Stipulation shall not become effective unless and until it is approved and entered by the Bankruptcy Court.

3. The Stay and any injunction are modified to permit the Plaintiff to (a) continue the State Court Action against BBB to final judgment or disposition as to BBB, Schwefel, and the Non-Debtor Defendants and (b) execute, levy, and collect upon any judgment, if any, rendered in the State Court Action from Schwefel, the Non-Debtor Defendants, non-debtor sources, or applicable insurance carriers, if any, only, and not from the Debtors, their estates, their successors, or their property.

4. The Stay and any injunction are further modified to permit proceeds of the Debtors' directors and officers liability policy bearing the policy number DOC 8702221-00 (the "D&O Policy"), to be disbursed to Schwefel, or for Schwefel's benefit, consistent with the terms of the D&O Policy, including but not limited to, defense costs (including attorney's fees, expert fees and expenses ) and indemnification.

5. The Stay is modified solely to the extent that any amounts due (a) in connection with defense costs (including attorney's fees, expert fees and expenses) and indemnification with respect to the State Court Action and/or (b) pursuant to a verdict, judgment, or settlement

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agreement in connection with the Claims, including any related claims for equitable relief, in the State Court Action, are paid by Schwefel, the Non-Debtor Defendants, non-debtor sources, or applicable insurance carriers, if any, and not by the Debtors, their estates, or their successors. Notwithstanding the provisions in this paragraph, nothing in this paragraph limits the Plaintiff in the State Court Action or Schwefel from the recovery of any damages and/or attorneys' fees and costs against Schwefel, the Non-Debtor Defendants, or applicable insurance, if any, except as otherwise set forth herein with regard to the D&O Policy.

6. The Debtors, their estates, or their successors shall not be required to fund costs associated with (a) any self-insured retention or deductible liability, (b) any obligation to post any security or deposit with Schwefel, any of the Non-Debtor Defendants, or any insurance carrier pursuant to the terms of an applicable insurance policy, if any, or (c) any other costs of any kind, including, without limitation, attorneys' fees and expenses or amounts due for Schwefel's, any Non-Debtor Defendants', or insurance carriers' claims based on indemnification obligations or applicable insurance policies, if any, against the Debtors, their estates, or their successors in the State Court Action. Notwithstanding the provisions in this paragraph, nothing in this paragraph limits the Plaintiff in the State Court Action or Schwefel from the recovery of any damages and/or attorney's fees and costs against Schwefel, the Non-Debtor Defendants, or applicable insurance, if any.

7. The Debtors do not stipulate, agree, represent, or warrant that they are liable for or will fund any amounts in connection with the State Court Action. Any payments made on account of claims and/or damages alleged and/or asserted in the State Court Action are subject to the terms,

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conditions, exclusions, and limitations contained in any applicable indemnification agreements. Nothing herein (a) alters or amends the terms, conditions, exclusions, and limitations found in any applicable insurance policy or indemnification agreement, (b) creates or permits a direct right of action for the Plaintiff or Schwefel against any applicable insurers; *provided*, that neither entry into nor the terms of this Stipulation shall impair or otherwise affect any direct right of action the Plaintiff or Schwefel may hold against any applicable insurers created by or arising under applicable state law; *provided, further*, that neither entry into nor the terms of this Stipulation shall impair any rights Schwefel may hold under or against the D&O Policy; or (c) precludes or limits, in any way, any insurer's rights or ability to contest and/or litigate the existence, primacy, and/or scope of available coverage under the applicable policy.

8. The Plaintiff agrees and acknowledges that (a) any recovery by Plaintiff arising from the State Court Action (whether by mediation, arbitration, trial, or otherwise) with respect to the Debtors, their estates, their successors, or their property is limited to funds made available from Schwefel, the Non-Debtor Defendants, non-debtor sources, and applicable insurance policies other than the D&O Policy, if any, and not from the Debtors, their estates, their successors, or their property and (b), to the extent that an applicable insurance policy, if any, or amounts due from Schwefel, any Non-Debtor Defendant, or non-debtor source do not satisfy a judgment, settlement, or other disposition with respect to the State Court Action, for any reason, neither the Debtors, their estates, their successors, or their property shall satisfy nor be liable for any such unsatisfied portion, which might otherwise be considered a general unsecured claim in the Bankruptcy Cases,

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and the Plaintiffs shall not seek to collect on any such unsatisfied portion from the Debtors, their estates, their successors, or their property.

9. The Plaintiff further agrees that any other claims or proofs of claim the Plaintiff has filed in connection with the State Court Action against the Debtors, their estates, or their successors in their chapter 11 cases, if any, are, by the entry of this Stipulation, deemed disallowed for purposes of distribution from the Debtors. These agreed upon terms may be reflected as such on the Bankruptcy Court's official claims register.

10. By entering into this Stipulation, none of the Parties are waiving nor will be deemed to have waived any available claims or defenses, including at law, equity, or otherwise with respect to the State Court Action, except as otherwise provided in this Stipulation.

11. The modification of the Stay set forth herein shall have no effect as to parties that are not a Party to this Stipulation.

12. Neither this Stipulation nor any terms contained herein shall be offered or received in evidence or in any way referred to in any legal action or administrative proceeding among or between the Parties other than as may be necessary to do the following: (a) obtain approval of or to enforce this Stipulation, (b) seek damages or injunctive relief in connection with any violation(s) of the terms of this Stipulation, or (c) inform the State Court that the Stay is being modified for the sole, limited purpose set forth herein except, in each case, as may otherwise be ordered by the State Court in the State Court Action.

13. The Debtors are authorized to take all actions necessary to effectuate the relief provided by this Stipulation.

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14. Neither the Stipulation nor any negotiations and writings in connection with this Stipulation will, in any way, be construed as or deemed to be evidence of or an admission on behalf of any Party regarding any claim or right that such party may have against the other Party.

15. Each of the Parties hereto represents and warrants it is duly authorized to enter into and be bound by this Stipulation.

16. This Stipulation may be executed in multiple counterparts, any of which may be transmitted by facsimile or electronic mail, and each of which will be deemed an original, but all of which together will constitute one instrument.

17. The terms and conditions of this Stipulation shall be immediately effective and enforceable upon its entry.

18. The Bankruptcy Court retains exclusive jurisdiction to resolve any dispute arising from or related to the interpretation or enforcement of this Stipulation and Agreed Order.



Dated: August 25, 2023

*/s/ Lauren R. Jacoby*

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